

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JOSHUA SCOTT,)	
)	
Plaintiff,)	
)	No. CV-10-556-HU
v.)	
)	
RECONTRUST COMPANY,)	ORDER
)	
Defendant.)	
_____)	

Joshua Scott
2757 NE Linden Avenue
Gresham, Oregon 97030

Plaintiff Pro Se

Pilar C. French
LANE POWELL
601 S.W. Second Avenue, Suite 2100
Portland, Oregon 97204-3158

Attorney for Defendant

BROWN, District Judge:

Pro se plaintiff Joshua Scott brings this action against
defendant ReconTrust Company. Defendant moves to dismiss for lack

1 of subject matter jurisdiction and failure to state a claim.¹ I
2 grant the motion.

3 BACKGROUND

4 Plaintiff's Complaint is approximately seven pages, exclusive
5 of several attachments. It is somewhat difficult to discern the
6 relevant facts and claims but to the extent possible, I recite them
7 here.

8 The title of the document is as follows: "Libel of Review,"
9 "common law counterclaim in admiralty - notice lis pendens and - -
10 verified statement of right -," "Re: God-given unalienable rights
11 in the original estate - Article III; Constitution." Compl. at p.
12 1.

13 Plaintiff states that he makes a "restricted appearance" under
14

15 ¹ Defendant requested oral argument on the motion. In
16 accordance with the Court's usual practice of granting such
17 requests, oral argument before Judge Hubel was set for August 27,
18 2010. In response to the motion, plaintiff filed a copy of the
19 minute order setting oral argument, upon which he has written in
20 red marking pen: "Refusal for Cause." (Dkt #10, p. 2.). The
21 cover letter accompanying this document, also docketed by the
22 Court as part of plaintiff's response to the motion, requests
23 that the Clerk of the Court "file this Refusal for cause into
24 case jacket of Article III case CV 10 556 HU." Id. at p. 1.
25 Plaintiff then writes that

26 [m]y signature below expresses that I have kept a copy
27 of the presentment, refusal for cause; with the
28 original clerk instruction along with original
presentment sent back to the District Court, refusal
for cause sent in red ink by way of Registered mail
within a few days of the presentment.

26 Id.

27 Upon review of the motion, its supporting memorandum, and
28 plaintiff's response, the Court finds no need for oral argument
and strikes the August 27, 2010 oral argument date.

1 "Rule E(8)." Id. He further states that defendant has been
2 "making false claims and this counterclaim and notice lis pendens
3 are now in the 'exclusive original cognizance' of the United States
4 through the district court - see the First Judiciary Act of
5 September 24, 1789, Chapter 20, page 77." Id.

6 As for jurisdiction in this court, plaintiff recites that in
7 "international law and according to the law of the land, agents of
8 a foreign principal are required to file any pretended claim in the
9 appropriate district court prior to exercising rights to that
10 claim." Id. He contends that district courts have "'exclusive
11 original cognizance' of all inland seizures and this includes
12 vessels in rem (Rule C(3)) such as trust organizations and legal
13 names[.]" Id.

14 He later states that defendant, "acting as 'City METRO
15 officer-Trustee/trust company - Bank of America agent/debt
16 scavenger' city of Gresham, District of Columbia is a free agent of
17 a foreign principal[.]" Id. at p. 2. He asserts that this Court
18 has acquired "exclusive original cognizance of this counterclaim
19 for the United States because this is a federal question - a
20 Constitutional matter involving a man on the land complaining about
21 theft and kidnap[.]" Id.

22 Under a section labeled "Cause of action," plaintiff states
23 that "Joshua Scott has sent notice that they intend to sell Joshua
24 Scott's home." Id. at p. 3 He states that this "presumption is
25 erroneous and based upon endorsements of private credit from the
26 Federal Reserve that have never been made in good faith." Id. He
27 has repeated references to a "presentment" of some sort. Id. He
28 also refers to a quitclaim deed, and two different loans initiated

1 for "the original \$180,000." Id.

2 The remaining allegations are nonsensical and irrelevant.

3 The attachments to the Complaint are (1) State of Oregon
4 Modification Request Form bearing the property address of 2757
5 Northeast Linden Avenue, Gresham, Oregon 97030, and further showing
6 defendant as the "Trustee," along with a loan number; (2) a notice
7 of impending sale/foreclosure on property located at 2757 Northeast
8 Linden Avenue, Gresham, Oregon 97030, with information regarding
9 the amount due as of May 10, 2010, a sale date, and further
10 information about what can be done to stop the sale; (3) a copy of
11 12 U.S.C. §§ 395, 411, 412 regarding federal reserve banks and
12 federal reserve notes; (4) a copy of certain constitutional
13 provisions or amendments from the state archives of the State of
14 Colorado; (5) a copy of a December 9, 1968 Judgment and Decree
15 regarding real property in the State of Minnesota; (6) a copy of a
16 quitclaim deed dated May 13, 2010, made and entered into between
17 Vicki Flynn and plaintiff in which Flynn "remises, releases, and
18 forever quitclaims" to plaintiff all "right, title, interest, and
19 claim" to property located at 2757 N.E. Linden Avenue, Gresham,
20 Oregon 97030; and (7) a statement by plaintiff regarding certain
21 bills, bearing serial numbers, which plaintiff states "have been
22 redeemed lawful money by demand pursuant to Title 12 U.S.C. 411."

23 STANDARDS

24 I. Subject Matter Jurisdiction

25 A motion to dismiss brought pursuant to Federal Rule of Civil
26 Procedure 12(b)(1) addresses the court's subject matter
27 jurisdiction. The party asserting jurisdiction bears the burden of
28 proving that the court has subject matter jurisdiction over his

1 claims. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375,
2 377 (1994).

3 A Rule 12(b)(1) motion may attack the substance of the
4 complaint's jurisdictional allegations even though the allegations
5 are formally sufficient. See Corrie v. Caterpillar, Inc., 503 F.3d
6 974, 979-80 (9th Cir. 2007) (court treats motion attacking
7 substance of complaint's jurisdictional allegations as a Rule
8 12(b)(1) motion); Dreier v. United States, 106 F.3d 844, 847 (9th
9 Cir. 1996) ("[U]nlike a Rule 12(b)(6) motion, a Rule 12(b)(1)
10 motion can attack the substance of a complaint's jurisdictional
11 allegations despite their formal sufficiency[.]") (internal
12 quotation omitted).

13 II. Failure to State a Claim

14 On a motion to dismiss, the court must review the sufficiency
15 of the complaint. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).
16 All allegations of material fact are taken as true and construed in
17 the light most favorable to the nonmoving party. American Family
18 Ass'n, Inc. v. City & County of San Francisco, 277 F.3d 1114, 1120
19 (9th Cir. 2002). However, the court need not accept conclusory
20 allegations as truthful. Holden v Hagopian, 978 F.2d 1115, 1121
21 (9th Cir. 1992).

22 A motion to dismiss under Rule 12(b)(6) will be granted only
23 if plaintiff alleges the "grounds" of his "entitlement to relief"
24 with nothing "more than labels and conclusions and a formulaic
25 recitation of the elements of a cause of action[.]" Bell Atlantic
26 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation
27 omitted). "Factual allegations must be enough to raise a right to
28 relief above the speculative level, . . . on the assumption that

1 all the allegations in the complaint are true (even if doubtful in
2 fact)[.]" Id. at 1965 (citations and internal quotations omitted).

3 To survive a motion to dismiss, the complaint "must contain
4 sufficient factual matter, accepted as true, to state a claim to
5 relief that is plausible on its face[.]" meaning "when the
6 plaintiff pleads factual content that allows the court to draw the
7 reasonable inference that the defendant is liable for the
8 misconduct alleged." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949
9 (2009) (internal quotation and citation omitted). Additionally,
10 "only a complaint that states a plausible claim for relief survives
11 a motion to dismiss." Id. at 1950. The complaint must contain
12 "well-pleaded facts" which "permit the court to infer more than the
13 mere possibility of misconduct."

14 DISCUSSION

15 I. Subject Matter Jurisdiction

16 Defendant argues that plaintiff's attempt to invoke both
17 admiralty and diversity jurisdiction must fail.² Federal courts
18 are courts of limited jurisdiction. Lowdermilk v. U.S. Bank Nat'l
19 Ass'n, 479 F.3d 994, 998 (9th Cir. 2007). Federal jurisdiction may
20 be based on diversity of citizenship or federal subject matter. 28
21 U.S.C. §§ 1331, 1332. Admiralty jurisdiction may be asserted under
22 28 U.S.C. § 1333.

23 A. Admiralty Jurisdiction

24 The admiralty jurisdiction of the federal courts is governed
25 by 28 U.S.C. § 1333 which provides:

26
27 ² Given the vague jurisdictional allegations, I address
28 federal question jurisdiction, as well as diversity and
admiralty.

1 The district courts shall have original jurisdiction,
2 exclusive of the courts of the States, of:

3 (1) Any civil case of admiralty or maritime
4 jurisdiction, saving to suitors in all cases all other
5 remedies to which they are otherwise entitled.

6 (2) Any prize brought into the United States and all
7 proceedings for the condemnation of property taken as
8 prize.

9 28 U.S.C. § 1333.

10 In determining the boundaries of admiralty jurisdiction, the
11 court looks to the purpose of the Congressional grant. Exxon Corp.
12 v. Central Gulf Lines, Inc., 500 U.S. 603, 608 (1991). The
13 fundamental interest giving rise to maritime jurisdiction is the
14 protection of maritime commerce. Id.; see also Ventura Packers,
15 Inc. v. F/V Jeanine Kathleen, 305 F.3d 913, 917 (9th Cir. 2002)
16 ("Though not confined to vessels, admiralty naturally centers
17 around them, as the great agents of maritime affairs.").

18 A fair reading of the Complaint indicates that the dispute
19 concerns real property located in Oregon. This does not provide a
20 basis for admiralty jurisdiction. See, e.g., Easton v. Crossland
21 Mortgage Corp., 114 F.3d 979, 982 (9th Cir. 1997) (without more,
22 foreclosures of real property under a non-judicial foreclosure
23 process established by state law, do not give rise to a federal
24 question cause of action); Stewart v. Mortgage Elec. Reg. Sys.,
25 Inc., No. CV-09-688-PK, 2010 WL 1054384, at *6 (D. Or. Feb. 10,
26 2010) (no factual or legal basis for admiralty jurisdiction in case
27 where complaint concerned dispute over real property) (Findings &
28 Recommendation adopted by Judge King, Mar. 19, 2010)

B. Federal Question Jurisdiction

Federal district courts have "original jurisdiction of all

1 civil actions arising under the Constitution, laws, or treaties of
2 the United States." 28 U.S.C. § 1331. Plaintiff makes no express
3 allegation that this Court's jurisdiction is based on a federal
4 question. There is no express assertion in the section of the
5 Complaint reciting plaintiff's "Cause of Action," or anywhere else
6 in the Complaint, of a claim arising under the Constitution or a
7 treaty.

8 Additionally, plaintiff cites to no cognizable federal statute
9 supporting a claim entitling him to relief. Thus, he fails to
10 articulate a basis for federal question jurisdiction.

11 C. Diversity Jurisdiction

12 A federal district court has subject matter jurisdiction of
13 all civil actions where the matter in controversy exceeds the sum
14 of \$75,000, and the action is between citizens of different states.
15 28 U.S.C. § 1332.

16 "Diversity jurisdiction requires complete diversity between
17 the parties—each defendant must be a citizen of a different state
18 from each plaintiff." In re Digimarc Corp. Derivative Litig., 549
19 F.3d 1223, 1234 (9th Cir. 2008). Here, although plaintiff does not
20 expressly assert his citizenship for diversity jurisdiction
21 purposes, a fair reading of his Complaint indicates that he lives
22 in Gresham, Oregon. I assume, for the purposes of this motion and
23 for assessing diversity jurisdiction, that plaintiff is a citizen
24 of Oregon.

25 Plaintiff fails to affirmatively allege the state of
26 incorporation and principal place of business of defendant. 28
27 U.S.C. § 1332(c)(1) (corporation deemed to be citizen of any state
28 by which it has been incorporated and of the state where it has its

1 principal place of business). He also fails to indicate the
2 alleged amount in controversy.

3 The allegations in plaintiff's Complaint do not reveal the
4 basis for federal question jurisdiction, diversity jurisdiction, or
5 admiralty jurisdiction. Rather, a fair reading of the Complaint
6 indicates that the dispute concerns a foreclosure of real property
7 located in Oregon, a process typically governed by state law. See
8 Or. Rev. Stat. §§ (O.R.S.) 86.705 - 86.990 (Oregon Trust Deed Act).
9 Accordingly, the Complaint must be dismissed for want of federal
10 jurisdiction. Blackburn v. United States, 100 F.3d 1426, 1436 (9th
11 Cir. 1996) (subject matter jurisdiction is a threshold issue, in
12 the absence of which the court cannot proceed to hear other
13 issues).

14 II. Failure to State a Claim

15 Under Federal Rule of Civil Procedure 8, the Complaint must
16 contain "a short and plain statement of the claim showing that the
17 pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a). This
18 "notice pleading" system requires that the Complaint give "the
19 defendant fair notice of what the plaintiff's claim is and the
20 grounds upon which it rests.'" Walsh v. Nevada Dep't of Human
21 Resources, 471 F.3d 1033, 1036 (9th Cir. 2006) (quoting Conley v.
22 Gibson, 355 U.S. 41, 47 (1957)).

23 "[T]he pleading standard Rule 8 announces does not require
24 detailed factual allegations, but it demands more than an
25 unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal,
26 129 S. Ct. at 1949 (2009) (internal quotation omitted). "A
27 pleading that offers labels and conclusions or a formulaic
28 recitation of the elements of a cause of action will not do. . . .

1 Nor does a complaint suffice if it tenders naked assertions devoid
2 of further factual enhancement." Id. (internal quotation omitted).

3 As stated above, the complaint "must contain sufficient
4 factual matter, accepted as true, to state a claim to relief that
5 is plausible on its face[,]" meaning "when the plaintiff pleads
6 factual content that allows the court to draw the reasonable
7 inference that the defendant is liable for the misconduct alleged."
8 Id. (internal quotation and citation omitted). Additionally, "only
9 a complaint that states a plausible claim for relief survives a
10 motion to dismiss." Id. at 1950. The complaint must contain
11 "well-pleaded facts" which "permit the court to infer more than the
12 mere possibility of misconduct."

13 Here, defendant argues that the Complaint fails to meet Rule
14 8's requirements. I agree. The Complaint, even when examined
15 under liberal standards afforded to pro se plaintiffs, fails to
16 identify a cognizable claim and does not reveal the type of relief
17 plaintiff seeks. There is no basis upon which the court may infer
18 misconduct by defendant. Rather, the Complaint is a jumble of
19 "naked assertions" which are, for the most part, nonsensical
20 assertions of legal propositions which fail to show that plaintiff
21 is entitled to relief.

22 CONCLUSION

23 Defendant's motion to dismiss [5] is granted. Plaintiff is
24 granted leave to file an amended complaint which complies with Rule
25 8 and contains a short and plain statement articulating the basis
26 of federal court jurisdiction, and contains a short and plain
27 statement of his claims showing that he is entitled to relief.
28 Such statements must meet the threshold //

1 requirements of Iqbal as described above. Any such amended
2 complaint is due within thirty days of the date of this Order.

3 Plaintiff is advised that failure to file an amended complaint
4 shall result in the dismissal of this proceeding with prejudice.

5 IT IS SO ORDERED.

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7 Dated this 23rd day of July, 2010.

8
9 /s/ Anna J. Brown

10 _____
11 Anna J. Brown
12 United States District Judge
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